REMARKS

The April 6, 2007 Office Action regarding the above-identified application has been carefully considered; and the presentation of new claims above together with the remarks that follow are submitted in a bona fide effort to respond thereto and address all issues raised in that Action.

The new claims have been drafted to more clearly distinguish over art, yet not unduly limit the scope of patentable coverage. Care has been taken to avoid entry of new matter, and it is respectfully submitted that clear support for the new claims appears throughout the original application text and drawings. In the specification for example, attention may be directed to the discussion of exemplary methodologies on pages 8-11.

For reasons discussed below, it is believed that this case is in condition for allowance. Prompt favorable reconsideration of this amended application is requested.

Summary of Art Rejections

Previous claims 1-16, 24 and 25 were rejected under 35 U.S.C. § 103 as unpatentable over US patent application publication no. 2002/0078228 to Kuisma et al. (hereinafter Kuisma) in combination with US patent no. 6,553,237 to Cantwell et al. (hereinafter Cantwell) and US patent application publication no. 2006/0236817 to Skog et al. (hereinafter Skog). Former claim 17 was rejected under 35 U.S.C. § 103 as unpatentable over Kuisma, Cantwell and Skog, further in view of US patent application publication no. 2006/0121889 to Alvarez et al. (hereinafter Alvarez). Claims 18-23 stand rejected under 35 U.S.C. § 103 as unpatentable over Kuisma, Cantwell and Skog, further in view of US patent application publication no. 2004/0198366 to Crocker et al. (hereinafter Crocker). These rejections are traversed.

Patentability of Claims

It is respectfully submitted that the new claims presented above recite limitations not fairly taught by the combinations applied in the rejection and therefore patentably distinguish over the art.

Each independent claim (26 and 35) relates to handling of an error in delivery of a message of a multimedia messaging service (MMS) through a wireless network to a wireless telephone. For example, each method includes steps relating to receiving a message notification that indicates a MMS message is available in a multimedia messaging service center (MMSC) and one or more attempts to obtain delivery of the MMS message for a wireless telephone from the MMSC through the wireless network. As such, all of the claims are now specific to MMS and attempts to obtain a MMS message from an MMSC.

Although the scope varies somewhat, each independent claim also recites steps relating to an initial attempt to obtain delivery and processing related to a failure of that attempt. For example, claim 26 recites:

> upon a failure of the first attempt, obtaining an error code corresponding to a type of error that caused the failure of the first attempt to obtain delivery of the MMS message;
>
> classifying the failure of the first attempt to obtain delivery of the MMS message as an applicable one of permanent and temporal, based on the error code;
>
> upon classification of the failure of the first attempt as permanent, abandoning attempting to obtain delivery of the MMS message for the wireless telephone through the wireless network;

Similarly, claim 35 recites:

> upon a failure of a first of the attempts, obtaining an error code corresponding to a type of error that caused the failure of the first attempt to obtain delivery of the MMS message;
>
> classifying the failure of the first attempt to obtain delivery of the MMS message as an applicable one of permanent and temporal, based on the error code;

upon classification of the failure of the first attempt as permanent, abandoning further attempts to obtain delivery of the MMS message for the wireless telephone through the wireless network;

It is respectfully submitted that the applied art does not teach either of these techniques for handling of an error in delivery of a message, particularly in the context of MMS message delivery through a wireless network to a wireless telephone.

As outlined above, the latest Office Action applied the combination of Kuisma, Cantwell and Skog to reject most of the prior claims, including the prior independent claims. The art rejections rely on the Kuisma publication for a general disclosure of an MMS message delivery technique using SMS notification and concede that Kuisma does not teach aspects of the methods that relate to processing responsive to an error in a first attempt to obtain delivery of the MMS message for the wireless telephone from the MMSC through the wireless network.

The Action cited the Cantwell patent for an alleged teaching of classification of errors, retrying communication in event of a temporal error and abandoning attempts in the event of a permanent error. However, the text cited by the Action (column 2, lines 16-28; column 3, lines 22-24; and column 4, lines 46-48) only discloses a number of retries at communication (not message delivery) up to a maximum "prescribed number of failed establishment attempts" (column 3, lines 22-24). Cantwell does not actually disclose the error code **corresponding to a type of error** that can be used for classification, and the Action does not identify any other disclosure of classification of a failure or error type to distinguish a failure of a first attempt between permanent and temporal. For the classification step, the Action cites only to text that teaches retries up to a prescribed number of failed attempts at establishing communication. Having failed to teach the applicable classification, it is submitted that Cantwell also fails to teach abandoning attempts based on classifying an error causing failure of the first attempt as permanent. In the context of this application, and thus in the pending claims, counting attempts

and terminating attempts when a maximum is reached is a different and additional aspect of the methodology, which if implemented (see e.g. as a dependent feature of claim 39) applies in the event that the failure of the first attempt was classified as **temporal**. The independent claims require at least one additional attempt, in the event that the failure of the first attempt is classified as temporal rather than permanent. It is respectfully submitted that abandoning attempts after a maximum number of tries, as actually taught by the cited text of Cantwell, would not lead one of skill in the art to (1) classify an error impacting a first attempt as an applicable one of permanent and temporal and (2) abandon further attempts upon classification of the failure of the first attempt as permanent, both of which are specifically required by new claims 26 and 35.

The addition of Skog does not lead to a combination that would satisfy the relevant claim limitations. The independent claims refer to an error code corresponding to a type of error that caused the failure of the first attempt to obtain delivery of the MMS message; and both claims recite classifying the failure of the first attempt based on that code. The Examiner concedes that Cantwell does not disclose an error code. In the latest Action, the rejections add the Skog publication, but only for an alleged teaching of an "error code." In Skog, a first error status code from a server is transformed into an error description message comprising an error description text and a second status code. The second status code effectively enforces display of the error description text at the client terminal. As such, Skog does not teach a code that enables classification of a failure as either permanent or temporal; and Skog was not cited or applied for a teaching of abandoning further attempts upon classification of the failure of the first attempt as permanent.

It is therefore submitted that the proposed combination of the teachings of Kuisma, Cantwell and Skog would not lead to an MMS message handling method that involves

classifying the failure of a first attempt to obtain delivery of an MMS message as an applicable one of permanent and temporal based an error code, and abandoning any further attempt(s) to obtain delivery of the MMS message upon classification of the failure of the first attempt as permanent. Hence, the proposed combination of Kuisma, Cantwell and Skog does not satisfy all recitations of either of Applicants' new independent claims.

It is further submitted that the proposed combination of Kuisma, Cantwell and Skog would not have been obvious to a person of ordinary skill in the relevant art. As noted, the claimed subject matter relates to MMS message handling. Although Kuisma is an MMS disclosure, Cantwell and Skog are not. The Cantwell technique applies in a somewhat different environment, in which the errors relate to attempts of a remote telephone unit to request and obtain access to network resources (not delivery messages). Skog relates to error messaging in the context of an HTTP communication with a web server, not MMS. Secondary teachings relating to attempts of a remote telephone unit to request and obtain access to network resources (Cantwell) and error messaging in the context of an HTTP communication with a web server (Skog) would not lead one of skill in the art to modify the basic MMS message delivery procedure of Kuisma to handle errors in MMS message delivery in the manner alleged in the Action. Also, it is submitted that the Action does not adequately show a reason why one of skill in the art would have been led to make the proposed combination. The Action seems to mention certain alleged advantages, such as reducing load on a base unit, handling non-recoverable messages and providing notice of an error to the user. However, it is not seen and the Action does not provide evidence or explanation as to where such alleged advantages are taught or how they would have been apparent to the person of skill in the art upon consideration of Kuisma, Cantwell and Skog. Hence, it is submitted that the art rejection based on Kuisma, Cantwell and

Skog does not provide evidence of a reason that actually would have been apparent to one of skill in the art and would have led that person to combine those documents in the manner proposed in the Action. For this additional reason, the proposed combination of Kuisma, Cantwell and Skog does not render either of Applicants' independent claims unpatentable over those cited documents.

Hence, claims 26 and 35 patentably distinguish over the proposed combination of Kuisma, Cantwell and Skog. The other pending claims include the recitations of the respective independent claims and should be patentable over Kuisma, Cantwell and Skog for at least the same reasons.

The other documents cited in the Action do not overcome the above noted deficiencies of Kuisma, Cantwell and Skog. Alvarez is cited only as a teaching of counting retry attempts and terminating attempts when the count exceeds a predetermined number; and Crocker is cited only for an alleged teaching of modifying the maximum number of attempts responsive to changes in characteristics of the wireless network. Addition of these features regarding maximum number of retry attempts to the combination of Kuisma, Cantwell and Skog, even if obvious (which is not conceded) ,would still result in a methodology that does not (1) classify an error impacting a first attempt as one of permanent and temporal (2) abandon further attempts upon classification of the failure of the first attempt as permanent, both of which are specifically required by all of the new claims (by virtue of recitations in new independent claims 26 and 35). Hence, the claims should patentably distinguish over Kuisma, Cantwell and Skog, even if further combined with Alvarez and/or Crocker.

For reasons discussed above, all of the new claims should patentably distinguish over the applied art; and all of the rejections should now be overcome.

Conclusions

Upon entry of the above claim amendments, claims 26-45 are active in this application, all of which should be patentable over the art, particularly the art applied in the latest Office Action. Applicants therefore submit that all of the claims are in condition for allowance. Accordingly, this case should now be ready to pass to issue; and Applicants respectfully request a prompt favorable reconsideration of this matter.

It is believed that this response addresses all issues raised in the April 26, 2007 Office Action. However, if any further issue should arise that may be addressed in an interview or by an Examiner's amendment, it is requested that the Examiner telephone Applicants' representative at the number shown below.

To the extent necessary, if any, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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